

CERA LLP

Solomon B. Cera (Bar No. 099467)
Thomas C. Bright (Bar No. 169713)
Pamela A. Markert (Bar No. 203780)
595 Market Street, Suite 1350
San Francisco, CA 94105
Telephone: (415) 777-2230
Email: scera@cerallp.com
Email: tbright@cerallp.com
Email: pmarkert@cerallp.com

DUNCAN FIRM, P.A.

James H. Bartolomei III (Bar No. 301678)
809 W. 3rd Street
Little Rock, AR 72201
Telephone: (501) 228-7600
Email: james@duncanfirm.com

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Todd Friedman (Bar No. 216752)
Adrian R. Bacon (Bar No. 280332)
21550 Oxnard Street, Suite 780
Woodland Hills, CA 91367
Telephone: (877) 206-4741
Email: tfriedman@toddfllaw.com
Email: abacon@toddfllaw.com

HOBEN LAW

Bryan D. Hoben (*pro hac pending*)
1112 Main Street
Peekskill, NY 10566
Telephone: (347) 855-4008
Email: bryan@hobenlaw.com

Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEXIS HUNLEY and MATTHEW SCOTT
BRAUER, Individually and On Behalf of All
Others Similarly Situated,

Plaintiffs,

v.

INSTAGRAM, LLC,

Defendant.

Case No.

CLASS ACTION

**COMPLAINT FOR DAMAGES BASED ON
COPYRIGHT INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiffs Alexis Hunley and Matthew Scott Brauer, on behalf of themselves and all others
2 similarly situated, for their complaint against Defendant Instagram, LLC, allege upon personal
3 knowledge as to their own conduct, and on information and belief based on the investigation of
4 plaintiffs' counsel, as to all other conducted alleged herein, as follows.

5 **I. INTRODUCTION**

6 1. Instagram, LLC ("Instagram") is the world's largest photo sharing application with
7 more than 50 billion photos uploaded by over one billion Instagram users since 2012. This case is
8 about Instagram's scheme to generate substantial revenue for its parent, Facebook, Inc., by
9 encouraging, inducing, and facilitating third parties to commit widespread copyright
10 infringement. This scheme was accomplished by using Instagram's "embedding" tool to display
11 copyrighted works of Instagram users on third-party publisher websites, thereby vastly extending
12 Instagram's reach across the Internet, but without appropriately compensating the copyright
13 holders.

14 2. Generally, "embedding" means the process of copying the unique hypertext
15 markup language ("HTML") code assigned to each photo or video published to the Internet, and
16 the insertion of that code into a target webpage or social media post so that photo or video
17 appears within the target post. Within the Instagram environment, this means that third parties can
18 copy the HTML code of an Instagram user's post and paste it into the third party's website,
19 causing the photo or video posted to that Instagram user's account to be simultaneously displayed
20 on that third party website.

21 3. Plaintiffs allege that when a third party embeds a copyrighted photo or video from
22 an Instagram user's Instagram account to that third-party's website without a license, permission,
23 or valid legal defense from the copyright owner, or from Instagram, this constitutes an
24 infringement of the copyright owner's exclusive display right under the Copyright Act of 1976,
25 17 U.S.C. §101 *et seq.*, and therefore violates the law.

26 4. Creators of photos and videos generally register their works with the U.S.
27 Copyright Office for the primary purpose of licensing those works because each such registered
28 video or photo has value. Plaintiffs allege that Instagram, through the direction and control of

1 Facebook, created and encouraged the use of Instagram's embedding tool to execute a scheme to
2 expand and grow Instagram's presence on third party websites to obtain a direct financial benefit
3 derived from increased traffic, impressions, clicks and views monetized through advertising
4 revenue on Instagram. The effect of this scheme has been the usurpation of the value of the
5 copyrighted works, as the practice of embedding posts from Instagram has vitiated and diluted the
6 market for licensing fees. By encouraging third party online publishers such as BuzzFeed.com,
7 Time.com, Mashable.com, and others to use the embed tool to display copyrighted works without
8 a license or permission from the copyright owners or from Instagram, Instagram is secondarily
9 liable for each instance of those online publishers infringing a copyright owner's display right
10 caused by the unauthorized embedding of the respective photo from the user's Instagram post.

11 5. From on or about July 2013 until June 2020, Instagram knew or recklessly
12 disregarded that no third party ever obtained a license or permission from Instagram to embed a
13 copyrighted photo or video. Instagram also knew or recklessly disregarded that no third party ever
14 obtained a license or permission from the copyright owner each time the embed tool was used to
15 display a copyrighted work. Instagram also regularly and systematically handled, controlled,
16 made reference to, and touched valuable copyrighted works with the intent and knowledge that
17 third party online publishers were embedding those works without ever obtaining a license from
18 the copyright owner, which in turn generated more traffic, more clicks, more likes, more shares,
19 and other revenue-generating conduct for Instagram born out of the infringing activity of third
20 parties.

21 6. Instagram misled the public to believe that anyone was free to get on Instagram
22 and embed copyrighted works from any Instagram account, like eating for free at a buffet table of
23 photos, by virtue of simply using the Instagram embedding tool. Instagram, by acts of
24 commission or omission, also misled third parties to believe that they did not need to obtain a
25 license or permission from the copyright owner to embed those works. This dramatically changed
26 in June 2020 when Instagram publicly admitted via a Facebook spokesperson that third parties in
27 fact needed to secure a license or permission from the copyright holders to embed copyrighted
28

1 works. See <https://arstechnica.com/tech-policy/2020/06/instagram-just-threw-users-of-its-embedding-api-under-the-bus/>.

2
3 7. By this admission, Instagram has been caught red-handed in its scheme to usurp
4 the value from copyrighted works for its own benefit in contradiction of its 2012 promise not to
5 sell and monetize copyright owner's photos and videos to third parties. Instead, Instagram
6 actively and directly encouraged, solicited, induced, facilitated, and handled copyrighted works in
7 its efforts to cause third party "embedders" to use the embed tool which, in turn, caused
8 copyrighted works to be displayed, republished, publicly performed and distributed, without
9 compensation, and in direct and indirect violation of the Copyright Act.

10 8. To make matters even more problematic for copyright owners who published their
11 photos and videos on Instagram, Instagram did not provide any tool, device or meaningful way
12 for copyright owners to control or track third party embeds of their Instagram posts, thereby
13 depriving copyright owners of the ability to discover alleged infringements. Meanwhile,
14 Instagram retained for itself the ability to track embeds of Instagram user content across the
15 Internet. It not only shopped certain user content to online publishers for embedding, but it also
16 retained for itself the technological means and ability to track copyrighted works embedded on
17 third party websites – all the while retaining 100% of the benefit and/or revenue from the
18 infringing activity of third-party embedders – of which Instagram had actual and/or constructive
19 knowledge.

20 9. From 2013 to 2021, Plaintiffs and members of the Class who owned copyrighted
21 works uploaded their intellectual property in the form of photo and videos to Instagram with the
22 expectation and trust that Instagram (and its parent Facebook) would honor, protect and respect
23 their copyrighted works. Therefore, Instagram's use of the embed tool and scheme violated each
24 user's exclusive display rights under the law by its scheme. This scheme utilized the embedding
25 tool to convert Plaintiffs and members of the Class's copyrighted works to Instagram's benefit.
26 Instagram misled by causing Plaintiff and members of the Class to believe Instagram would
27 protect and respect copyright owners' works based on Instagram's terms of use, the contract that
28 allegedly binds users to Instagram. Instead, Instagram denied copyright owners any meaningful

1 Plaintiffs and members of the Class in California. Defendant regularly solicits and does business
2 in California and derives substantial revenue therefrom.

3 18. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(a)
4 because Defendant is headquartered in this District, and a substantial part of the events and
5 transactions giving rise to the claims alleged herein occurred in this District.

6 19. In addition, Instagram’s terms of use provide that all claims against it must be
7 litigated in the United States District Court for the Northern District of California.

8 **IV. FACTUAL ALLEGATIONS**

9 **A. The Importance of Copyright and the Display Right**

10 20. Copyrights are the legal title to intellectual property by which creators of original
11 content such as photos and videos protect their moral and economic rights in that content.

12 21. Respecting and defending the financial value of creators’ copyrighted works is a
13 bedrock of our democracy, so important that the Founding Fathers enshrined the U.S.
14 Constitution with specific references to copyrights, and which expressly gave Congress the power
15 to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors
16 and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const.
17 Article I, Section 8. “Copyright law encourages people to create original works and thereby
18 ‘ultimately serves the purpose of enriching the general public through access to creative works.’”
19 *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 526 (1994). The Supreme Court of the United States
20 found that by “establishing a marketable right to the use of one’s expression, copyright supplies
21 the economic incentive to create and disseminate ideas.” *Harper & Row Publishers, Inc. v.*
22 *Nation Enters.*, 471 U.S. 539, 558 (1985).

23 22. The importance of copyright enforcement is not limited to this country. Dating
24 back to the early 1500s, French courts recognized that only the creators of works, or their
25 assigned heirs, should have the right to publish those works. In 1886, more than 10 countries
26 signed the Berne Convention for the Protection of Literary and Artistic Works, whose stated
27 purpose is the “protection of the rights of authors in their literary and artistic works.” The
28 Convention ensures that authors are afforded the same protections in those signatory countries as

1 they would enjoy within their own country, thereby promoting the worldwide distribution of
2 creative works while at the same time ensuring that the rights of the author of a work created in
3 one country will not be circumvented through the infringement of those rights in another country.
4 As of the date of this complaint, 188 countries, including the United States, have signed the Berne
5 Convention.

6 23. The 1976 Copyright Act makes it illegal to publicly perform, publicly display,
7 distribute, or reproduce a copyrighted work except in limited instances, and provides for statutory
8 damages, willful statutory damages, and the right to recover attorneys' fees. 17 U.S.C. §§501 *et*
9 *seq.*

10 24. In 1976, the Copyright Act was amended to give content creators such as
11 photographers and videographers an automatic copyright in their photos and videos.

12 25. To file suit based on an alleged infringement, that automatic copyright interest
13 must be registered with the U.S. Copyright Office.

14 26. Plaintiffs allege that embedding from a social media platform to a third-party
15 website of a copyrighted work without permission or a license or valid legal defense infringes on
16 the display right set forth in the Copyright Act.

17 27. Section 106 of the Copyright Act (the "Act") grants copyright owners the
18 exclusive public display right and control of the economic value of their work.

19 28. The legislative history of the display right under the Act confirms that the statute
20 was intended to reach conduct like the use of embedding regardless of the physical location of
21 where the copy of the file of a photo or video has been displayed.

22 29. As alleged below, Instagram is liable for the conduct of third-party embedders who
23 used the embed tool (HTML code) as a "device or process" to cause copyrighted works to be
24 displayed (and/or playable in the case of videos) on each third-party website and, therefore,
25 Instagram contributed to causing the "display" of copyrighted works for purposes of the Act
26 without those third-party embedders ever having actual possession of the copyrighted works.

27
28

1 **B. Instagram Introduces Embedding While Breaking Its Promise To Respect**
2 **The Rights of Copyright Owners.**

3 30. On December 18, 2012, Instagram, having just been acquired by Facebook,
4 announced that its new terms of use granted itself the perpetual right to sell users' photographs
5 without payment or notification, a dramatic policy shift that sparked a public outcry. The most
6 material and inequitable of the terms included the following: *“You agree that a business or other*
7 *entity may pay us to display your username, likeness, photos (along with any associated*
8 *metadata), and/or actions you take, in connection with paid or sponsored content or promotions,*
9 *without any compensation to you...”*

10 31. The new policy was slated to take effect on January 16, 2013, just three months
11 after Facebook completed its acquisition of Instagram. That same week, Instagram quickly
12 relented to public protest and announced it would "remove" the language that had caused a user
13 revolt amid strong public objections from prominent photography magazine publishers such as
14 National Geographic and other copyright owner advocacy trade organizations and groups.

15 32. On January 19, 2013, Instagram's new terms of use went into effect without the
16 offending provision. Instagram made it clear in public pronouncements and its terms of use that it
17 “respected” copyright and was not going to sell and monetize users’ photos to third parties. With
18 the value of its \$1 billion acquisition of Instagram now at risk, Facebook needed ways to generate
19 revenue from Instagram, which at the time was generating no income.

20 33. Thus, in July 2013, Instagram announced a new tool for sharing content outside of
21 the Instagram application, otherwise known as embedding. Embedding was originally marketed
22 as a new tool to share one’s own photos or videos from one’s Instagram account to “your own
23 website or blog.” But Instagram had other plans that it was less public about, including the
24 embedding of copyrighted works onto third party websites and blogs that were hosted outside of
25 Instagram’s platform. That month, Instagram rolled out a “pilot program” with Bleacher Report,
26 Mashable.com, CNN.com, HuffPost.com and People.com to test drive the new “embedding”
27 tool.
28

1 34. As alleged, “embedding” is a technical process by which a copyrighted work can
2 be made visible and displayed without the copyrighted work being saved on the server of the
3 third-party website. In general, a webpage is a made up a series of instructions usually written in
4 Hypertext Markup Language (“HTML”). Such instructions are saved to a server, which is
5 essentially a computer connected to the Internet. When a user wishes to view that webpage, his or
6 her computer’s browser connects with the server, at which point the HTML code instructs the
7 browser on how to arrange the webpage on the user’s computer. In other words, the HTML code
8 is converted into what the viewer perceives, including photo and videos.

9 35. The HTML code allows for the arrangement of text and/or images and/videos on a
10 page and can also include photographs or videos to be available to be displayed. When including
11 a photograph or video on a webpage, the HTML code instructs the browser how and where to
12 place the photograph(s) or video(s). Put another way, “embedding” a photograph or video on a
13 webpage is the act of a technical web coder adding a specific “embed” code to the HTML
14 instructions that incorporates a photograph or video, hosted in this case on Instagram’s server, to
15 be displayed on a third-party webpage that the third-party controls with regard to the other text,
16 photos or videos around the embedded work. To embed a photo or video, the coder or web
17 designer adds an “embed” code to the HTML instructions from a public Instagram account. This
18 code directs the browser to the Instagram server to retrieve the photo or video. An embedded
19 photo or video will then hyperlink to the third-party webpage for display.

20 36. To secretly enhance Instagram’s embedding tool’s functionality and generation of
21 revenue, in 2016 or earlier, Instagram started putting tracking code technology that attached to
22 users’ photos and videos uploaded to Instagram as a means to measure, handle, monitor, track and
23 monetize the most valuable copyrighted works, *i.e.* the works that generated the most traffic.

24 37. Beginning in 2013, Instagram induced and encouraged third party embedders to
25 display copyrighted works without permission from the copyright holders or from Instagram.

26 38. Plaintiffs and the members of the Class have been subject to Instagram’s scheme
27 since 2013 when Instagram created a platform tool to embed copyrighted works without the
28

1 necessary means for copyright holders to enforce their copyrights, all while Instagram was
2 actively engaged in direct handling of copyrighted works for third parties to use.

3 39. In other words, the embed tool was built by Instagram to create a “frictionless”
4 system that made it quick, easy and cheap to take copyrighted works and embed them into a third-
5 party website without the copyright owner ever being given notice of such embed. Likewise, a
6 viewer of the webpage where the copyrighted work is “embedded” likely does not even know that
7 the photo or video displayed in the body of the webpage has been “embedded” into the page with
8 the actual photo or video’s file being stored and saved on Instagram’s server.

9 40. To a viewer of the webpage, content embedded from an Instagram user’s public
10 account appears no differently than other content within the page, be it an advertisement,
11 clickable link, or the third-party website’s original and/or owned or licensed content. A viewer of
12 that website does not even need to be an Instagram user or have an Instagram account to view
13 Instagram photos or videos embedded within any third-party webpage.

14 41. All Instagram account holders allegedly agree to Instagram’s Terms of Use in
15 order to initially open an account and use the platform (upload their photos and videos). Pursuant
16 to Instagram’s Terms of Use, Instagram makes it clear and promises to users that each user retains
17 ownership of their copyrighted photos and videos that are posted to the user’s Instagram accounts
18 (“we respect copyright!”). Each user agrees to grant Instagram a nonexclusive license to the
19 content the user uploads and posts to their accounts, including any copyrighted photos or videos,
20 which, in turn, provides Instagram the mere *option* to sublicense those copyrighted photos or
21 videos should Instagram elect to do so.

22 42. However, Instagram has admitted that it has never granted any third-party
23 embedder a license or sublicense to any of the Plaintiffs’ or class members photos or videos at
24 issue. No third-party embedder has any evidence of a license or sublicense or implied sublicense
25 from Instagram. Thus, the use of the embedding tool under these factual circumstances violates
26 the Copyright Act and Instagram’s own Terms of Use.

27 43. Importantly, Instagram embed users (*i.e.*, third party website publishers) agree to
28 be bound by an additional set of rules contained within Instagram’s Platform Policy from 2013

1 through the present, all of which were substantially the same in terms of copyright owners' rights.
2 Notably, the Platform Policy contains no language to suggest, imply, or indicate that Instagram
3 automatically grants embed users a license or sub-license or implied sublicense to freely use,
4 display, publish, distribute, copy or embed the photos or videos of users such as Plaintiffs and the
5 members of the Class without first ensuring that the embedder received "all rights necessary to
6 display the content" of the Instagram user that owned the copyrighted work.

7 44. Plaintiffs and the members of the Class never intended or agreed that users of
8 Instagram's embed technology would receive an automatic sublicense from Instagram to
9 Plaintiffs' and the Class members' respective photos and videos, which would be contrary to
10 Instagram's public promise to respect the copyright and its Terms of Use and Platform Policy. By
11 analogy, Instagram is a buffet table at a restaurant and Plaintiffs' Instagram accounts are the trays
12 holding the food which are the copyrighted photos and videos. Just because third-party
13 embedders are given access to the buffet table (impliedly a frictionless, lawless system), as well
14 as Plaintiffs' photos and videos (valuable dishes of food), does not mean that the embedders can
15 freely eat from the buffet table without asking permission or paying an agreed price for the food
16 being offered.

17 45. To add to the challenges faced by Plaintiffs and the members of the Class in
18 enforcing their copyrighted works, Instagram does not have a copyright management tool or other
19 mechanism for Instagram users that own copyrights, to allow such copyright owners to track
20 which third parties embed their photos and videos. Users such as Plaintiffs and the Class
21 members have no viable means to track the rampant copyright infringement that the Instagram
22 platform enables through embeds.

23 46. Instagram is the beneficiary of millions of copyrighted photos and videos uploaded
24 by its users. Defendant reaps billions of dollars annually from hosting, tracking, encouraging,
25 handling, and causing a significant number of such photos and videos, which include hundreds of
26 thousands or even millions of registered copyrighted works, to be embedded and therefore
27 infringed by third parties who used the embed tool.
28

1 47. Instagram knew of the infringements or was reckless in its disregard of its users'
2 rights, and permitted and facilitated infringements of third-party embedders because no third-
3 party embedder ever obtained a license or permission from the copyright owner or from
4 Instagram. While Instagram informed Plaintiffs and the members of the Class that their photos
5 and videos belonged to them and agreed to not sell or monetize those works, Instagram directly
6 benefitted from the infringing activity that it induced or contributed to by handling such content
7 on a regular and systematic basis. In other words, each year since 2013 Instagram handled and
8 elevated copyrighted content by causing third party website publisher embedders to display that
9 content, which in turn drove traffic and other monetizable activities back to Instagram's platform.

10 48. From its launch of the Instagram embed tool, Instagram went from reporting zero
11 revenue in 2012 to reaping billions of dollars in profits each year, receipt of which was highly
12 dependent on the rapid growth in online postings (or "uploads") of valuable copyrighted works.
13 While third-party embedders allegedly agreed to the Platform Policy and Terms of Use (which
14 have changed multiple times from 2013 to 2020 but stayed materially consistent as to copyright
15 policies and permission from the copyright owners), Instagram has not only done nothing to
16 monitor whether third party embedders certify, warrant, or represent that the third party has
17 secured permission or a license from the copyright owner, Instagram actively encouraged, aided
18 and induced the most active offenders such as BuzzFeed, Mashable, Time, People,
19 HuffingtonPost.com and other third parties to embed such valuable content.

20 49. Instagram intentionally and brazenly encouraged, aided and induced third party
21 embedders to cause to be displayed copyrighted photos and videos without making any effort to
22 control or stop the rampant infringement occurring on its platform while knowingly participating
23 in such conduct.

24 50. Instagram operates in a two-sided market where it seeks to both encourage active
25 user engagements (views, likes, comments, shares etc.) and at the same time induce users to post
26 a steady stream of photo and video content (some estimates of 95 million photos per day). While
27 the posting of content is key, the sharing and embedding of it outside the Instagram app across the
28 Internet to third-party websites is just as important because it keeps existing Instagram users

1 interacting with the Instagram environment and introduces the product to new users – the ultimate
2 goal of each being the monetization of user behavior through the microtargeting of advertising to
3 individual users.

4 51. Instagram’s motives are transparent. The volume of quality user photo and video
5 content is the source of “network effects.” A vast library of copyrighted content draws and
6 attracts third-party embed users to Instagram, and the growth in users incentivizes the posting of
7 more content on Instagram, which in turn enables Instagram to reap more revenue. Building
8 extensively on the backs of copyright holders who never gave express authorization to third-party
9 embed users for their works to be displayed via the embed tool, Facebook reported that it
10 generated \$70 billion in annual revenue, with \$9 billion in revenue in 2019 and over \$13 billion
11 in 2020 from advertising on Instagram alone.

12 52. Facebook, Instagram’s parent company, is estimated to control 23% of the online
13 advertising market with Instagram accounting for approximately 32% of that. Much of that ad
14 revenue is built on data Facebook gathers from Instagram users drawn to Instagram by infringing
15 material, with the Facebook and Instagram platforms being integrated in various ways such as
16 cross-platform messaging linked user profiles, and other behind-the-scenes ways not visible to the
17 public.

18 53. It has been “wildly commonplace” for Instagram to suggest, pitch, handle or
19 promote/elevate user copyrighted content for third party embed users to display on their
20 websites. The top publisher embed users such as BuzzFeed, Mashable, Time, HuffingtonPost.com
21 and other third party embedders have had a direct line of communication with Instagram and its
22 agents from 2013 through the present because of the mutual benefit to all involved – except the
23 copyright owners.

24 54. While Instagram’s terms of use grant Instagram a license to a user’s video and
25 photo content, and the *right* to sublicense that content to third-party embed users, Instagram has
26 never expressly granted a sublicense to a third party embed user. If Instagram had automatically
27 granted a sublicense, that would likely violate the public’s trust that Instagram pledged and
28 promised to never sell and monetize user’s photos or videos with third parties. Instagram has

1 nonetheless engaged in conduct that has allowed uncontrolled and knowing copyright
2 infringement through its embed tool.

3 55. Since 2013, Instagram knew that its embed users needed to obtain express license
4 or permission to embed copyrighted works from Instagram and Instagram has never granted a
5 license or express permission to any third-party embedder for the copyrighted works. For
6 example, on June 1, 2020, in *McGucken v. Newsweek LLC et. al.*, No. 1:2019cv09617 (S.D.N.Y.
7 June 1, 2020), the Court held (ECF No. 35) that there was no evidence that Instagram's Terms of
8 Use gave Newsweek.com a sublicense to Plaintiff photographer McGucken's photo that
9 Newsweek had embedded from his Instagram account into an online Newsweek post.

10 56. Facebook, which owns and controls its subsidiary, Instagram, publicly confirmed
11 on June 4, 2020, that Instagram's Platform Policy does not automatically give embed users, a
12 license or sub-license to use and display the content of Instagram's general user population:

13 While our terms allow us to grant a sub-license, we do not grant
14 one for our embeds API. Our platform policies require third parties
15 [such as BuzzFeed or Time or Mashable] to have the necessary
16 rights from applicable rights holders. This includes ensuring they
17 have a license to share this content, if a license is required by law.

18 See [https://arstechnica.com/tech-policy/2020/06/instagram-just-threw-users-of-its-embedding-
19 api-under-the-bus/](https://arstechnica.com/tech-policy/2020/06/instagram-just-threw-users-of-its-embedding-api-under-the-bus/)

20 57. Until this public admission, there was "insufficient evidence to find that Instagram
21 granted [third-party embedders] a sublicense to embed Plaintiff's Photograph on its website," See
22 *Sinclair v. Ziff Davis, LLC*, No. 18-CV-790 (KMW), 2020 WL 3450136, at *1 (S.D.N.Y. June 24,
23 2020). Instagram never clarified or likely even enforced its own policies regarding third-party
24 embed users needing a license or permission. This is likely because Instagram enjoyed the
25 benefits of the rampant infringements from its embedding tool and coyly remained "agnostic" and
26 "neutral" as a service provider tech platform to avoid acting or being deemed a media company
27 that is liable for the content it publishes. Rather, it was in fact behind the scenes pitching,
28 promoting and/or handling valuable copyrighted works as if it were a media company publisher.

1 result, Plaintiffs could not have discovered the violation of rights, even upon exercise of
2 reasonable due diligence until, at the earliest, December 2020 when Instagram, through
3 Facebook, admitted in open court the truth regarding embedding.

4 **VI. CLASS ACTION ALLEGATIONS**

5 62. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil
6 Procedure 23(a), and 23(b)(1), 23(b)(2), 23(b)(3), and/or 23(c)(4) on behalf of the following
7 class:

8 All individual persons or entities who, from July 1, 2013 to the
9 present (“Class Period”), owning the exclusive right to publicly
10 perform, reproduce, publicly display, or distribute film, audiovisual,
11 or photographs and/or videos over the Internet for any work first
12 going into the public domain after December 31, 1977 and whose
13 registered copyrighted work(s) have been uploaded to Instagram,
14 where such copyrighted owner has had their copyrighted work
embedded and caused to be displayed via Instagram’s embedding
tool on a third party website without the copyright owner’s consent,
permission or a license.

15 Excluded from the class are: (a) Instagram and its parent, Facebook; (b) the subsidiaries and
16 affiliates of Instagram and Facebook; (c) any person or entity who is a partner, officer, director,
17 employee, or controlling person of Instagram or Facebook; (d) any entity in which Instagram or
18 Facebook have a controlling interest; (e) any rights holder to whom Instagram or Facebook have
19 directly granted express permission for a license to a third party embedder for acts of
20 infringement occurring after such license began; and (f) the legal representatives, heirs,
21 successors, and assigns of any excluded party. Plaintiffs reserve the right to amend the Class
22 definition if further investigation and/or discovery reveal that the Class should be expanded,
23 divided into subclasses, or otherwise modified. Pursuant to Federal Rules of Civil Procedure
24 23(a)(1), the members of the Class are so numerous that joinder of all members is impracticable.
25 The exact number of Plaintiff class members is presently unknown, but is reasonably
26 ascertainable applying objective criteria. The number of Class members is anticipated to be
27 potentially many thousands based on the number of embeds on the Instagram platform.
28

1 63. Pursuant to Federal Rule of Civil Procedure 23(a)(2) and (b)(3), there are
2 questions of law or fact common to the Class members. The Class members uploaded and
3 distributed their copyrighted photos and/or videos to Instagram with the objective expectation that
4 third-party embedders would obtain permission, consent or a license to use or display such
5 copyrighted work(s). The claims of the Plaintiffs and the members of the Class arise from the
6 uniform method by which Instagram induced copyright infringement by making available
7 copyrighted works to embedders without requiring them to acquire a license or permission, and
8 therefore properly compensate, copyright holders. The claims of Plaintiffs and the Class members
9 arise from a common federal statute and legal theory and a common nucleus of operative facts is
10 applicable to the claims of each Class member. This liability question may be decided by one
11 Court. The common questions of law and fact include, but are not limited to:

- 12 a. Whether Defendant's conduct as alleged constitutes an infringement of the
13 copyrights held by Plaintiffs and the Class in their respective works.
- 14 b. Whether Defendant's conduct as alleged constitutes contributory copyright
15 infringement of the copyrights held by Plaintiffs and the members of the Class.
- 16 c. Whether Defendant's conduct as alleged constitutes inducement of copyright
17 infringement of the copyrights held by Plaintiffs and the members of the Class.
- 18 d. Whether Defendant's conduct as alleged constitutes vicarious infringement of the
19 copyrights held by Plaintiffs and the members of the Class.
- 20 e. Whether Defendant acted willfully with respect to the copyright infringements
21 alleged.
- 22 f. Whether Defendant has deliberately avoided taking reasonable precautions to deter
23 copyright infringement from the embed tool.
- 24 g. Whether Defendant has reasonably implemented a policy and procedure to prevent
25 infringements of the copyrights held by Plaintiffs and the members of the Class on
26 Instagram via the API embed tool.
- 27 h. Whether Plaintiffs and the members of the Class have sustained injury and, if so,
28 what is the proper measure of relief.

1 64. Pursuant to Federal Rule of Civil Procedure 23(a), Plaintiff's claims are typical of
2 the claims of the other members of the Class since Plaintiffs and all members of the Class were
3 deprived of the statutory compensation for the use of their copyrighted works.

4 65. Pursuant to Federal Rule of Civil Procedure 23(a)(4), Plaintiffs will fairly and
5 adequately represent and protect the interests of the other members of the Class. Plaintiffs have
6 no interests adverse or antagonistic to those of the Class and have retained counsel experienced in
7 federal copyright law matters and class action lawsuits.

8 66. Pursuant to Federal Rule of Civil Procedure 23(b)(3), a class action is superior to
9 all other available methods for the fair and efficient adjudication of this controversy since the
10 injury suffered by individual Class members may be relatively small, and the expense and burden
11 of individual litigation would therefore make it impossible and/or impracticable for members of
12 the Class to individually redress the wrongs done to them. There will be no difficulty in the
13 management of this action as a class action.

14 67. Certification of Plaintiff's claims for class action treatment is also appropriate
15 pursuant to Federal Rules of Civil Procedure 23(b)(2) because Instagram has acted or refused to
16 act on grounds generally applicable to Plaintiffs and the members of the Class in failing and
17 refusing to compensate Plaintiffs and Class members for the unlawful use and reproduction of
18 their copyrighted works, and failing or refusing to modify its platform which permits rampant
19 embedding by third parties of copyrighted material, making appropriate both declaratory and
20 injunctive relief with respect to Plaintiffs and the Class. Instagram's records reflect the identities
21 of the Class members whose copyrighted materials have been posted on their platforms without
22 compensation according to law. As a result, Plaintiffs seek to represent an ascertainable Class, in
23 that determining membership in the Class can be accomplished through access to Instagram's
24 own records.

FIRST CAUSE OF ACTION

(Inducement of Copyright Infringement)

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3 68. Plaintiffs incorporate herein by this reference each and every allegation contained
4 in each paragraph above.

5 69. Instagram’s embed users have infringed and are infringing Plaintiffs’ and the Class
6 members’ rights in their registered copyrighted photos and video and audiovisual works by, *inter*
7 *alia*, embedding infringing copies of Plaintiffs’ and the Class members’ copyrighted works onto
8 and from Instagram’s platform and publicly performing, displaying, distributing, and
9 reproducing, or purporting to authorize the public performance, display, distribution, or
10 reproduction of such copyrighted works or infringing videos, all without authorization from
11 Instagram or Plaintiffs and the members of the Class.

12 70. Instagram’s embed users are therefore directly infringing Plaintiffs’ and the Class
13 members’ exclusive rights of reproduction, distribution, public performance, and public display
14 under U.S.C. §§ 106(1), (3), (4), and (5).

15 71. Defendant is liable under the Copyright Act for inducing the infringing acts of
16 Instagram’s embed users. Defendant exercises control over and/or influences which photos and
17 videos its embed users embedded and which infringing material gets removed or does not get
18 removed from its platforms.

19 72. Defendant operates with the objective of promoting its use to infringe Plaintiffs’
20 and the Class members’ copyrights and is unlawfully fostering copyright infringement by
21 Instagram embed users.

22 73. Defendant knew or recklessly disregarded that Plaintiffs and the Class members’
23 photos and audiovisual works are copyrighted and authorized for purchase through various
24 outlets, including numerous lawfully authorized online digital download services, or for licensing
25 from the Class members or their agents.

26 74. Defendant is also aware that its embed users are employing Instagram to
27 unlawfully reproduce, distribute, publicly perform, and publicly display Plaintiffs’ and the Class
28

1 members' copyrighted works. Defendant intends for, encourages, and induces Instagram embed
2 users to employ Instagram in this regard.

3 75. Defendant's acts of inducing copyright infringements have been willful,
4 intentional, purposeful, and in disregard of and indifferent to the rights of Plaintiffs and the Class.

5 76. As a direct and proximate result of Defendant's inducement of infringements of
6 Plaintiffs and the Class members' exclusive copyrights, Plaintiffs and the Class members have
7 been damaged.

8 77. Defendant's conduct is causing and, unless enjoined by this Court, will continue to
9 cause Plaintiffs and the Class members great and irreparable injury that cannot fully be
10 compensated.

11 78. Pursuant to 17 U.S.C. § 502, Plaintiffs and the Class members are entitled to a
12 permanent injunction requiring Defendant to employ reasonable methodologies to prevent or limit
13 infringement of Plaintiffs' and the Class members' copyrights.

14 **SECOND CAUSE OF ACTION**

15 **(Contributory Copyright Infringement)**

16 79. Plaintiffs incorporate herein by this reference each and every allegation contained
17 in each paragraph above.

18 80. Instagram's embed users have infringed and are infringing Plaintiffs and the Class
19 members' rights in their registered copyrighted photos, and audiovisual works by, *inter alia*,
20 embedding infringing copies of Plaintiffs and the Class members' copyrighted works onto and
21 from Instagram's platform and publicly performing, displaying, distributing, and reproducing, or
22 purporting to authorize the public performance, display, distribution, or reproduction of such
23 copyrighted works or infringing videos, all without authorization. Instagram's embed users are
24 therefore directly infringing Plaintiffs and the Class members' exclusive rights of reproduction,
25 distribution, public performance, and public display under U.S.C. §§ 106(1), (3), (4), and (5).

26 81. Defendant is liable as a contributory copyright infringer for the infringing acts of
27 Instagram embed users. Defendant enables, induces, facilitates, and materially contributes to each
28 act of infringement by Instagram embed users.

1 89. Defendant is vicariously liable for the infringing acts of Instagram’s embed users.

2 90. Defendant has both the right and the ability to supervise, monitor, track and
3 enforce Instagram’s embed users’ infringing conduct and to prevent Instagram’s embed users
4 from infringing Plaintiffs and the Class members’ copyrighted works.

5 91. Instagram significantly and directly benefits from widespread infringement by its
6 embed users. The availability of a vast collection of valuable, quality copyrighted works on
7 Instagram acts as a substantial draw, attracting embed users to the platform. The more works that
8 are embedded by third-party embedders, the more user traffic and amount of time Instagram users
9 spend there when they visit the platforms and the traffic sent back into the Instagram platform.
10 Defendant derives substantial advertising revenue tied directly to the volume of traffic it is able to
11 attract to Instagram.

12 92. Defendant’s third-party embedder infringements have been willful, intentional,
13 purposeful, and in disregard of and indifferent to the rights of Plaintiffs and the Class.

14 93. As a direct and proximate result of Defendant’s third-party embedder
15 infringements of Plaintiffs and the Class members’ exclusive copyrights, Plaintiffs and the Class
16 have been damaged.

17 94. Defendant’s conduct is causing and, unless enjoined by this Court, will continue to
18 cause Plaintiffs and the Class great and irreparable injury that cannot fully be compensated.

19 95. Pursuant to 17 U.S.C. § 502, Plaintiffs and the Class are entitled to a permanent
20 injunction requiring Defendant to employ reasonable methodologies to prevent or limit
21 infringement of Plaintiffs’ and the Class members’ copyrights.

22 **VII. RELIEF REQUESTED**

23 96. Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, pray
24 for judgment against Defendant as follows:

- 25 a. Determining that this action may be maintained and certified as a class
26 action pursuant to Federal Rule of Civil Procedure 23 and directing that
27 reasonable notice of this action be provided to the Class pursuant to Rule
28 23(c)(2).

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Respectfully submitted,

CERA LLP

By: /s/Solomon B. Cera _____
Solomon B. Cera
595 Market Street, Suite 1350
San Francisco, CA 94105
Telephone: (415) 977-2230
Email: scera@cerallp.com

DUNCAN FIRM, P.A.

James H. Bartolomei III
809 W. 3rd Street
Little Rock, AR 72201
Telephone: (501) 228-7600
Email: james@duncanfirm.com

HOBEN LAW

Bryan D. Hoben (*pro hac vice pending*)
1112 Main Street
Peekskill, NY 10566
Telephone: (347) 855-4008
Email: bryan@hobenlaw.com

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Todd Friedman
21550 Oxnard Street, Suite 780
Woodland Hills, CA 91367
Telephone: (877) 206-4741
Email: tfriedman@toddfllaw.com

Attorneys for Plaintiffs and the Proposed Class